



Memorandum

To : Ms.

Date November 12, 1987

From : Ken McManigal

Subject: Welfare Exemption - Long Beach Jewish Community Senior Housing Corporation, Los Angeles County

This is in response to your October 21, 1987, request that we review the file and the October 2, 1987, letter from the Corporation's Assistant Executive Director Lee Rosenblum enclosing the Housing Management Agreement for Section 8 (Agreement) between the Corporation and Barker Management Incorporated.

As you know, section 214 requires that property be both owned and operated by organizations meeting all of the requirements for the exemption in order to qualify for the exemption (Christ the Good Shepherd Lutheran Church v. Mathiesen, 81 Cal.App.3d 355). Usually, the owner and the operator are one and the same, the filing of one claim for exemption will suffice, and the property will be eligible for exemption if the owner/operator meets such requirements. If, however, the owner and the operator are separate entities, each must file a claim for exemption, and property of the owner will be eligible for the exemption only if both the owner and the operator are exempt organizations which meet such requirements. As explained in Assessor's Handbook AH 267, Welfare Exemption, at page 8:

"A qualifying organization, 'A', is the owner of 10 acres of land and a building used for qualifying religious purposes.... A nonqualifying organization, 'B', operates a preschool in a portion of the building in a private nonqualifying manner. Since 'B' (the operator) is not qualified, 'A' (the owner) does not receive an exemption on the portion of the property, building and land, used by 'B'. However, the remaining property, building and land, is exempt as it is used exclusively by a qualifying organization, 'A', for qualifying religious purposes."

Where the owner and the operator are separate entities, usually also, they are not related and are independent of each other. Occasionally where the owner and an organization that would ordinarily be considered an operator are separate

entities, however, the "operator" is really an agent of the owner, one who represents another, called the principal, in dealings with third persons (Civil Code section 2295). As explained in 3 Cal.Jur.3d Agency, section 1, In General:

"An agent, in the words of the statute, is one who represents another, called the principal, in dealings with third persons. In the language of the courts, he is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and on account of the latter, and to render an account of such transaction. As thus defined, 'agent' is a general term that includes brokers, factors, consignees, shipmasters, and all other persons meeting the requirements of the aforementioned definitions. The contract creating the relation of principal and agent is called a contract or agency, and the right of the agent to act in the name or on behalf of his principal is termed his authority or power, which, when created by a formal instrument in writing, is said to be conferred by letter or power of attorney.

"The representation of the principal by the agent in dealings with third persons is called agency. The agency relationship has been defined as that resulting from the act of one person, called the principal, who authorizes another, called the agent, to conduct one or more transactions with one or more third persons and to exercise a degree of discretion in effecting the purpose of the principal. In addition to its representative character and its derivative authority, the essential characteristics of an agency relationship are that an agent holds a power to alter legal relations between both the principal and third persons and between the principal and the agent himself, that an agent is a fiduciary with respect to matters within the scope of the agency, and that a principal has a right to control the conduct of the agent with respect to matters entrusted to him."

Attached for your information and review is a copy of 3 Cal.Jur.3d Agency, sections 1-4 and 9-12.

Thus, in those instances in which the owner and an organization that would ordinarily be considered an operator are principal and agent, consistent with the law of agency we have regarded the owner as the owner and operator for purposes of the exemption and the agent as the owner's representative. Typically, the agent is performing a management function for the owner/principal, such as managing a thrift store, managing

a home for the elderly, etc., and is tending to the affairs of this principal rather than to its own affairs.

Review of the Agreement discloses that it is a contract of agency for the management by Barker Management Incorporated of Federation Tower in Long Beach, which presumably is the property at 3799 E. Willow Street, Long Beach. See in this regard particularly paragraphs 1, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 25 of the Agreement. See also the Management Plan which, according to paragraph 5 of the Agreement, is attached to the Agreement as Exhibit "A". It isn't attached, however, and an executed copy of the Agreement together with an executed copy of the Management Plan should be requested from the Corporation.

Finally, attached also for your information and review is a copy of the case of Pacific Grove - Asilomar Operating Corp. v. Monterey County, 43 Cal.App.3d 675, discussing, among other things, the principal and agent relationship between the State and a nonprofit corporation in headnotes/sections 8, 12 and 13. Note particularly in section 12 the court's emphasis on the State's controls in that Management Agreement.

We are returning the file herewith.

~~JKM~~/rz

Attachments

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton
Mr. James Barga
DAS File
Legal Section